

**In The United States District Court For The Northern District of Georgia
Atlanta Division**

Javado Barner,
Petitioner

FILED IN CLERK'S OFFICE No. 1:02-CR-18-04-CC
U.S.D.C. Atlanta

V.

SEP - 4 2012

United States
District Court

JAMES N. HATTEN, CLERK
By  Deputy Clerk

Petition For Dismissal of Probation Warrant And Revocation Proceedings Due To An Unreasonable Delay and Prejudice.

Now comes Javado Barner, the Petitioner being pro se and via of the above-styled motion request that this Honorable court dismiss probation warrant and revocation proceedings due to an unreasonable delay and prejudice the Petitioner request dismiss for the reasons that follow:

1. The Petitioner submits that he was prejudiced by the delay in executing the probation warrant and proceedings. "Cases considering due process claims for revocation proceedings have held that relief is...called for...[where] there was both unreasonable delay and prejudice." United States v. Santana, No.07-50190. (2008) citing Benny v. United States Parole Comm'n, 295 F.3d 977, 986 (9th Cir.2002); Camacho v. White, 918 F.2d 74,79 (9th Cir. 1990); Vargas v. United States Parole Comm'n 865 F.2d 191, 194 (9th Cir. 1988); Hopper v. United States Parole Comm'n, 702 F. 2d 842, 845 (9th Cir. 1983); United States v. Wickham, 618 F.2d 1307, 1311 (9th Cir. 1979). The Petitioner is thus prepared to show both an unreasonable delay and prejudice.
 - a. Due to the unreasonable delay, the Petitioner was denied the opportunity to further his education while being incarcerated in the state custody and the opportunity to train for gainful employment. See Exhibit #1 which is sought my enrollment in community college and to train for employment as a fire fighter. The unreasonable delay stemmed from a 32 month delay dating, from 1-28-2010 to 9-1-2012 without conducting a timely hearing, a hearing has a timeliness requirement in the rule. See Fed. R. Cim.P.32.1 (b)(1)(A) (Preliminary hearing "must [be] promptly conduct[ed],"(b)(2)(final hearing to be held "within a reasonable time".) For the initial appearance, "A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a magistrate judge. "Fed.R. Cim.P.32.1(a)(1); see also 18 U.S.C.{3606 ("Upon arrest, [a person alleged to have violated terms of supervised release] shall be taken without unnecessary delay before the court having jurisdiction over him") See U.S. v. Santana, Supra..
 - b. The Petitioner was prejudiced with the 32 month delay, in that he was denied meaningful opportunities to further his education and receive meaningful employment training upon return to society. It was the negligence of the government with its untimely setting of a hearing to resolve the issues pertaining to the alleged violations. Had a prompt hearing been scheduled, then the Petitioner could have entered college and trained for employment. An extremely lengthy delay attributable to government negligence creates a " strong presumption that [the petitioner] suffered prejudice," which the government has burden to rebut. United States v. Mendoza, 525 F.3d at 841.

Thus, it is warranted that the Petitioner's probation warrant and revocation proceedings be dismissed due to unreasonable delay and prejudice. Wherefore, the Petitioner prays that this Honorable court dismiss the probation warrant and revocation proceedings due to an unreasonable delay and prejudice.

Respectfully Submitted,



Javado Barner
GDC # 1099144

This 29th day of August 2012

Certificate of Service

I, Javado Barner hereby certify that a true and correct copy has been served upon the opposing party via United States Mail being placed in a proper envelope with adequate postage addressed as follows:

United States District Court
For The District of Georgia
Atlanta Division
Suite 600 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303

United States Attorney
Northern District of Georgia
Suite 1800 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303

Respectfully Submitted,

Javado Barner

Javado Barner
GDC # 1099144
Sumter County C.I.
P.O. Box 725
Americus, GA 31709

This 29th day of August 2012

SUMTER COUNTY CORRECTIONAL INSTITUTE
INMATE REQUEST FORMINMATE'S NAME Javado BarnerINMATE'S GDC ID# 1099144DORM # 2

DETAIL

INSTRUCTIONS: PLACE A CHECK MARK NEXT TO THE NAME OF THE STAFF MEMBER YOU ARE REQUESTING TO SEE. USE A SEPARATE REQUEST FORM FOR EACH STAFF MEMBER.

WARDEN COLSON _____

COUNSELOR WILLIAMS _____

DEPUTY WARDEN MURPHY _____

COUNSELOR CRAWFORD

DEPUTY WARDEN NAGLE _____

COUNSELOR BARNUM _____

CAPTAIN HOBBS _____

RECORDS/MAIL COORD. _____

LT. RELIFORD _____

LAUNDRY _____

OTHER _____

EXPLAIN IN DETAIL THE SUBJECT TO BE DISCUSSED (USE BACK OF FORM IF NEEDED)

Can you please tell me what the technical College Coarse you tried to enroll me in was for? Send me any literature on the purpose of joining the fire team and what it promotes, and last please tell me what the pending charges that kept me from participating in those programs are?

Thank You!

Javado Barner

INMATE'S SIGNATURE

8/12/12

DATE

REPLY ON THE ABOVE SUBJECT

- TECH CLASS = Horticulture
- Not fit available on Fire team
- Your US MARSHAL'S Service "Detainer" prevents you from going outside & Both the "Fire Team" & the Tech Class would require you to go outside.

STAFF MEMBER'S SIGNATURE M. Peace

DATE

8/13/12

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LAUNDRY _____

OTHER _____

EXPLAIN IN DETAIL THE SUBJECT TO BE DISCUSSED (USE BACK OF FORM IF NEEDED)

Can you please send me any documentation about why I was not allowed to enter the class at the Technical College? and why I was denied from joining the fire team? Oh please disregard the request for copies Mr Barnum got them. :)

INMATE'S SIGNATURE Javado BarnerDATE 8/6/12

REPLY ON THE ABOVE SUBJECT

Pending CHARGES? FED?

STAFF MEMBER'S SIGNATURE L.O.

DATE

8/8/12